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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

MELBA SUE JOHNSON, ROBERT  
ALGOOD and TERESA ALGOOD,

Plaintiffs,

-VS-

RE-EM TRANSPORTATION  
SERVICES, LTD.; 1338023  
ALBERTA, LTD.; and ADAM  
BOYKIW,

Defendants.

Cause No. \_\_\_\_\_

**COMPLAINT AND JURY  
DEMAND**

## INTRODUCTION

This action seeks redress for personal injuries sustained by Plaintiffs when Defendant Adam Boykiw negligently operated a semi-truck while in the employ of the other named Defendants and permitted his trailer to cross the centerline on U.S. Highway 2 in Flathead County, Montana, causing a collision with Plaintiffs' vehicle. Count I alleges negligence. Count II alleges negligence *per se*. Plaintiffs Melba Sue Johnson, Robert Algood and Teresa Algood allege as follows:

## PARTIES AND JURISDICTION

1. Plaintiff Melba Plaintiff Melba Sue Johnson is a resident of Kaufman County, Texas. Plaintiffs Robert Algood and Teresa Algood are also residents of Kaufman County, Texas.

2. Defendant Re-em Transportation Services LTD and Defendant 1338023 Alberta LTD are Canadian national trucking companies doing business in the United States of America and in the state of Montana. The principal place of business of both companies is in Edmonton, Alberta, Canada.

3. Defendant Adam Boykiw is a natural person who is a citizen of Canada. Upon information and belief, his primary place of residence is in Edmonton, Alberta, Canada.

4. Plaintiffs allege an amount in controversy in excess of Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

5. Accordingly, Plaintiffs allege this court has jurisdiction over the parties and this matter by virtue of 28 U.S.C. § 1332. Venue is proper in the Missoula Division pursuant to L.R. 1.2(c)(5).

### **STATEMENT OF FACTS**

6. This lawsuit arises out of a collision that occurred on or about August 12, 2014 in Flathead County, Montana. At that time and place, Defendant Boykiw was operating a semi-truck/double trailer combination while in the course and scope of his employment for Defendants Re-em Transportation, LTD and/or 1338023 Alberta, LTD. The truck and dual trailer combination was owned by Defendants Re-em Transportation, LTD. and/or 1338023 Alberta, LTD.

7. Defendant Boykiw was operating the combination semi-truck and two trailers westbound on U.S. Highway 2. As he drove on a downhill curve, Boykiw failed to negotiate the curve and the rear trailer crossed the center-line and struck the pickup truck driven by Robert Algood, in which Teresa Algood and Johnson were passengers.

8. Defendant Boykiw was negligent in the operation of his employers' semi-truck. Defendants Re-em Transportation, LTD and/or 1338023 Alberta, LTD. are vicariously liable for Defendant Boykiw's actions.

9. As a result of the collision, Plaintiffs Johnson, Robert Algood and Teresa Algood were injured.

### **COUNT I—Negligence**

Plaintiffs reallege and incorporate by reference herein each and every allegation set forth above and, in addition thereto, allege the following:

10. Although Defendants owed Plaintiffs a duty to use reasonable care in the operation, control and loading of the semi-truck they failed to ensure such operation in a reasonable and prudent manner, taking into account all conditions and requirements and were therefore negligent.

11. Defendant Boykiw's negligence includes but is not limited to:

- a. Failing to control speed;
- b. Failing to brake properly;
- c. Failing to keep a proper lookout;
- d. Failing to stay in his lane of traffic;
- e. Driving carelessly or recklessly in light of all conditions including the state of his own truck;
- f. Driving inattentively;
- g. Failing to ensure the vehicle is properly loaded in light of his decision to carry or haul a second "double" or "pup" trailer.

12. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered and continue to suffer bodily injury, and have sustained and will sustain in the future medical expenses, pain and suffering, disfigurement, loss of

established course of life, mental anguish, physical impairment, property damage, out-of-pocket expenses and other associated damages and compensable injuries.

13. Defendants Re-em Transportation Services LTD and/or 1338023 Alberta LTD are liable for the negligent conduct of Defendant Boykiw by virtue of respondeat superior.

### **COUNT II—Negligence *Per Se***

Plaintiffs reallege and incorporate by reference herein each and every allegation set forth above and, in addition thereto, allege the following:

14. Because the acts of negligence listed above amount to violations of the Montana Code Annotated and/or Federal Motor Vehicle Safety Standards and/or the Federal Motor Carrier Safety Act, Plaintiffs further assert that the Defendants were negligent *per se* as a matter of law. Each of the above described legal codes was enacted to protect the operators and passengers of motor vehicles from the types of harm Plaintiffs have suffered. Defendants, as a driver and commercial trucking company, are part of the classes of persons regulated by these legal codes. Thus, Defendants were negligent *per se*.

15. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered and continue to suffer bodily injury, and have sustained and will sustain in the future medical expenses, pain and suffering, disfigurement, loss of

established course of life, mental anguish, physical impairment, property damage, out-of-pocket expenses and other associated damages and compensable injuries.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For all general, special and compensatory damages in an amount to be proved at trial but in an amount not less than \$1.1 million.
2. For all costs and expenses of suit as allowed by law.
3. For attorney's fees as allowed by law.
4. For pre- and post-judgment interest at the legal rate
5. For such further and additional relief which seems just and equitable to the Court.

**JURY DEMAND**

Plaintiff hereby demands a jury trial

DATED this 24th day of March, 2016.

McDONALD LAW OFFICE, PLLC

/s/ Jonathan McDonald  
JONATHAN McDONALD  
*Attorney for Plaintiff*